

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

HSBC MORTGAGE SERVICES, INC.,

Plaintiff,

vs.

Civ. No. 13-508 KG/KK

MARIE A. MARTINEZ, A/K/A  
MARIE MARTINEZ,  
FELIX J. MARTINEZ, A/K/A  
FELIX JOE MARTINEZ,  
FELIX JOE MARTINEZ PUBLIC TRUST, AND  
SOUTHWEST FINANCIAL SERVICES, INC.,

Defendants.

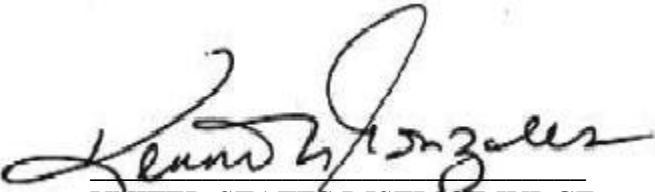
ORDER

This matter comes before the Court upon the Notice of Affirmation filed by *pro se* Defendants Marie A. Martinez, a/k/a Marie Martinez, and Felix J. Martinez, a/k/a Felix Joe Martinez, (collectively, the Martinezes) on January 7, 2014. (Doc. 34). In that Notice of Affirmation, the Martinezes request a jury trial for this foreclosure action. Plaintiff responded to the Notice of Affirmation on January 23, 2014, and the Martinezes replied on February 6, 2014. (Docs. 43 and 52). Having considered the Notice of Affirmation and the accompanying briefs, the Court denies the Martinezes' request for a jury trial in this matter.

The Tenth Circuit recently acknowledged that “[u]nder either federal or New Mexico law, a foreclosure is an action in equity, which must be decided by the court rather than a jury.” *Elm Ridge Exploration Co., LLC v. Engle*, 721 F.3d 1199, 1209 (10th Cir. 2013) (citations omitted). *See also Citimortgage, Inc. v. Giron*, 2010 WL 3997939, at \*8 (N.M. Ct. App. 2010) (“It is well-established in New Mexico that ‘foreclosure suits are equitable in nature, ... and New Mexico courts have not recognized a constitutional right to a jury trial on issues that are

necessarily decided in the course of a foreclosure suit in state court such as the existence or the amount of the debt.” (quoting *Las Campanas Ltd. Pshp. v. Pribble*, 1997-NMCA-055, ¶ 9, 123 N.M. 520)). Although the Martinezes argue that this established tenet does not apply to this foreclosure, they fail to provide any legal support for their arguments. See D.N.M. LR-Cv 7.3(a) (reply “must cite authority in support of the legal positions advanced.”). The Court will, therefore, deny the Martinezes’ request for a jury trial.

IT IS ORDERED that the Martinezes’ request for a jury trial in the Notice of Affirmation (Doc. 34) is denied.



UNITED STATES DISTRICT JUDGE